

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 297 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

MICRON PRECISION PUMPS & GEARS LTD.

Versus

SOUTH INDIA VISCOSE LTD.

Appearance:

1. Civil Revision Application No. 297 of 2000
MR DEVANG D TRIVEDI for Petitioner
RULE SERVED BY DS for Respondent No. 1

2. Civil Revision Application No 1946 of 1996
MR DEVANG D TRIVEDI for Petitioner
RULE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 25/07/2000

ORAL JUDGEMENT

This civil revision application has been

preferred against the order dated 30th March, 2000 passed by the Civil Judge (S.D.), Baroda in the application at Ex.48, whereby the petitioner has not been permitted to withdraw the amount deposited pursuant to the order passed by the trial court. The petitioner filed a Special Civil Suit No.984 of 1993 for the recovery of Rs.9,39,900/- for the goods sold to the respondent. On 03.05.1995, the trial court passed the ex parte decree for the entire amount with the interest at the rate of 18% in favour of the petitioner. The respondent filed a Misc.Civil Application No.173 of 1996 under Order-9, Rule-13 of Civil Procedure Code for setting aside the ex parte decree dated 03.05.1995 and for restoring the suit to its original number. On 22nd July, 1996, the trial court passed the order staying the order ex parte decree with the condition that the respondent will deposit the amount of Rs.6,30,181/-, the amount was deposited pursuant to the order of the trial court. The petitioner moved an application for withdrawal that amount during the pendency of the Misc.Civil Application No.173 of 1996. The trial court permitted the petitioner to withdraw the amount as per the order dated 7th November, 1996. On furnishing adequate sureties in terms of the orders, that order was challenged in this court in Civil Revision Application No.1945 of 1996. That revision application was subject to the termination of the proceedings pending before the trial court, the trial court has dismissed the application i.e. Misc.Civil Application No.173 of 1996. As such, no proceedings are pending before the trial court, hence, the Civil Revision Application No.1945 of 1996 has become infructuous and this court passed an order dismissing the said revision as infructuous. After the termination of the proceedings in the trial court in respect of the Special Civil Suit No.984 of 1993, the petitioner moved an application for withdrawal of the amount deposited by the respondent pursuant to the trial court's order, the amount deposited by the respondent is Rs.6,30,181/-. It is mentioned in the trial court's order that the earlier order on the application at Ex.10, the trial court has already passed an order for permitting the petitioner to withdraw that amount on certain condition during the pendency of the application in the trial court, but the implementation order was stayed for one year by the High Court. According to the learned counsel for the petitioner, the trial court has considered that the spirit of the order of this court. That in the event that the opponent succeeds in the application, he has not to wait for one year. But the application was not decided within one year, and hence till the same is decided, the opponent is not entitled for the same amount. The Revision

Application No.1945 of 1996 has been decided today and the amount deposited in the trial court is not subject to the order of this court. The trial court erred in directing to invest the amount with any Nationalized Bank for a period of one year. I have considered the facts and circumstances of this case and the submission made by the learned counsel for the petitioner. It is the case of the petitioner that the certain amount was a condition precedent to hear the application for setting aside the *ex parte* decree. The petitioner permitted to withdraw that amount, but that order stayed by this court in the Revision Application No.1945 of 1996 and that order was subject to the proceedings pending in the trial court. As the proceedings in the trial court in respect of the Special Civil Suit No.984 of 1993 had terminated on the dismissing of the revision application and C.A.No.173 of 1994. No proceedings are pending as the trial court had already permitted the petitioner to withdraw the amount deposited by the respondent by order dated 07.11.1996 and that order was challenged in the Revision Application No.1945 of 1996 and that revision application has also been decided as dismissed. No proceedings are pending, the petitioner is entitled to withdraw the said amount deposited by the respondent in the trial court. As such, this revision application is allowed and the impugned order dated 30th March, 2000 is set aside and the petitioner is permitted to withdraw the amount with interest deposited by the respondent to it. On furnishing the solvency sureties to this satisfaction of the trial court. Rule is made absolute, with no order as to costs.

Date : 25/07/2000. (Kundan Singh,J)

vrpanchal.